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ABSTRACT

If equal educational opportunity is to become a reality for minority students, implementation of bilingual-bicultural curricula must commence immediately. Legislation committing our nation to bilingual education has been passed, but very little progress has been made so far in implementing bilingual programs. Continuous pressure must be exerted on our national and state legislatures in order that the requisite amount of funds be provided. We must involve ourselves in the decisions of our local school boards and push for the establishment of bilingual education programs there. If such programs are not set up, funded, and properly administered, we must prepare for legal confrontation by lodging community-initiated administrative complaints with the Health, Education and Welfare Office for Civil Rights or by instituting suits against local school districts. The fact that the Department of Health, Education and Welfare has construed Title VI of the Civil Rights Act of 1964 to mean that bilingual programs can be legally required indicates that a series of court battles would most likely result in a victory for the nation's school children. Though the short-term cost of establishing bilingual programs will be high, the returns on our investment in equal educational opportunity will be enormous. (Author/PMP)

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BILINGUAL-BICULTURAL EDUCATION MAKING EQUAL EDUCATIONAL OPPORTUNITIES AVAILABLE TO NATIONAL ORIGIN MINORITY STUDENTS

by Sen. Montoya

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BILINGUAL-BICULTURAL EDUCATION - MAKING EQUAL EDUCATIONAL OPPORTUNITIES AVAILABLE TO NATIONAL ORIGIN MINORITY STUDENTS

Until recently efforts to eliminate public school segregation and to insure equal educational opportunity for all students have been primarily concerned with the plight of the nation's black students. Lately, however, the movement to attain educational equality in this country, generated by the historic Supreme Court decision, Brown v. Board of Education,[1] has sought to encompass the educational interests of another large minority group, the national origin minority students of America.[2] These students have long been the victims of discrimination; discriminated against not so much for their particular race or color, but for their cultural and linguistic differences. After generations of callous neglect, their problems are just now beginning to receive national attention. Recognition of the existence of this discrimination has prompted some remedial actions on their behalf, but

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the measurable results thus far have been quite minimal. The troublesome questions of how to effectively eliminate the vestiges of prejudice and segregation and how to best provide access to equal educational opportunities for all non-English-speaking minorities yet remain. One proposed solution, the implementation of bilingual-bicultural education programs, is considered by many educational experts to be the most promising method of providing an adequate and productive education for these students. This article will examine the concept of bilingual-bicultural education, the immediate need for its implementation, and the legal right of the national origin minorities to receive such an education.

BACKGROUND-THE COMPELLING NEED FOR BILINGUAL-BICULTURAL EDUCATION

Presently there are more than three and one-half million students who come from home environments where the language spoken is

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other than English.[3] Unless there is a national commitment made to drastically change our current educational policies, these children, whether they be Mexican American, Puerto Rican, Chinese, Native American, or any other national origin minority, will very likely be denied access to an equal educational opportunity.[4] Statistical evidence garnered by congressional committees and various commissions glaringly show the overwhelmingly poor results caused by our present educational policies toward these students.[5]

The utter failure of our public school system to properly educate non-English speaking students is not confined to one region of our country. A few examples will suffice to show that the problem is national in scope. In Texas, where there is an especially large proportion of Mexican Americans, the problem is particularly acute. Eighty percent of the Mexican American students drop out before completing high school.[6] It is estimated that forty percent of the Mexican

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American population in Texas is functionally illiterate.[7] The situation is scarcely better in California, where approximately seventy-five percent of the State's Spanish-surname students do not finish high school.[8]

According to a survey conducted in 1963, in New York City, where Puerto Ricans comprise almost one fourth of the student population, of nearly twenty-one thousand "academic" diplomas granted, only 331 went to Puerto Ricans.[9] Nearly eighty-five percent of all Puerto Rican students fail to finish high school.[10]

Statistics in other cities where large numbers of national origin minorities are concentrated are nearly as bad. In Chicago's public schools, sixty percent of the city's Puerto Rican student population dropout before they complete high school;[11] in Philadelphia the rate hovers around seventy percent.[12] In San Francisco the Chinese-speaking child fares just as badly.[13]

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Even in the northeastern region of the country the problem is severe. In Boston there is a Puerto Rican student population numbering over 7000. Yet between 1965 and 1969 only four Puerto Rican students graduated from Boston's public schools.[14] It is estimated that twenty-one percent of all elementary and secondary pupils in Maine are of French Canadian descent; yet in areas surveyed, only two percent of these students go on to college.[15]

Perhaps the most abysmal educational record is that of our native Indians. The Census of 1960 shows that ten percent of all Indians over fourteen years of age have had no formal education at all, nearly sixty percent have less than an eighth grade education, and fifty percent of all Indian school children fail to finish high school.[16]

Obviously the nation's public school system has not managed to provide the national origin minorities with an adequate education.

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A principal reason for this dismal educational record is the educational philosophy that has been in vogue in this country for the past seventy-five years. This educational concept, primarily responsible for the dysfunctional education that so many of our nation's students have received, has traditionally been called the "melting pot theory."[17] This theory has been based on the premise that the nation's public school system would serve as the "Great Equalizer" for its young.[18] "Into it would go people of every nationality, creed and loyalty and out would emerge Americans."[19] Taught only the English language and the English culture the only possible product of this system would be a homogenized American, eager to participate in the American dream and quite capable of blending into the mainstream of American life.

But it hasn't worked out that way for a large number of America's people. As one commentator has recently stated

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> "Far from accomplishing its professed aim of integrating minorities into the 'mainstream,' the monolingual, monocultural school system has succeeded in denying whole generations of children an education and condemning them to lives of poverty and despair."[20]

Millions of Americans have thus been alienated from our society, bitter victims of an attempted cultural eradication.

The primary explanation for the failure of the melting pot theory has been the inability of its proponents to understand that America is a multi-lingual, multi-cultural society, and that this cultural diversity, rather than being some curse, is a national asset that should be developed to the fullest extent possible.[21]

Under the "melting pot" philosophy national origin minority students have entered the public schools and have discovered that their

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language and culture have been branded inferior by those in charge of the school system.[22] Understandably many of these children experience severe "culture shock" and are unable to cope with the situation.[23] Not allowed to speak in their mother tongue and unable to keep up with those students who come from English-speaking backgrounds, they quickly fall behind and are made to feel inferior to their Anglo contemporaries. Instead of taking into account the linguistic and cultural differences of these students, the schools label the non-English speaking students "slow learners," and either keep them back in school, place them in classes for the mentally handicapped, or isolate them so that they will not interfere with the academic progress of their Anglo peers.[24] It should be no mystery why the national origin minorities have failed to achieve satisfactory educations. It is time to do away with this inequitable system of education and replace it with an educational

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program that will at last give these children access to equal educational opportunities.

The proposed solution to this educational dilemma is the implementation of bilingual-bicultural education programs. The advocates of bilingual education recognize that the lack of English speaking ability has been the primary cause for the extremely low scholastic achievement record of these national origin minority students.[25] They understand that there can be no real and meaningful equal educational opportunity unless these children are permitted to learn in a language they comprehend. In addition the schools must be made to realize that it is essential to encourage these students to take pride in their native tongue and culture.[26]

Bilingual education, as defined by the National Advisory Committee on Mexican American Education in its report, "The Mexican

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American: Quest for Equality," is instruction in both English and the mother tongue "so that the mother tongue is strengthened concurrent with the pupil learning a second language, and then using both languages. This bilingual instruction must occur in all curriculums and at all grade levels until the student is thoroughly at home in his second language."[27] Bilingual education is not the Teaching of English as a Second Language (TESL), generally utilized in adult education classes for non-English speakers which merely stresses the learning of language. The goal in bilingual education goes beyond the acquisition of English language proficiency and strives for the development of well-integrated bilingual-bicultural individuals.

It must be kept in mind that accompanying this bilingual language education there must be a continuing emphasis on culture, for unless educators insure that language and the culture it embodies are seen together, bilingual education will fail. The national origin

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minority students must be able to relate their mother tongue to who they are. For unless we are able to realize that language, and the culture it carries, is at the very core of a youngster's concept of himself, all our well-intentioned efforts will be condemned to failure.[28] As two bilingual education experts point out, language, especially for the young, "carries all the meanings and overtones of home, family, love, and friendship. It is the instrument of their thinking and feeling, their gateway to the world."[29]

FEDERAL LEGISLATION AND PROGRAMS

In 1967 Congress passed the Bilingual Education Act, the first major Congressional response to the growing educational demands of the national origin minorities.[30] Introduced by Senator Yarborough and co-sponsored by this author the Act was of tremendous psychological importance in the efforts to provide equal educational opportunities for

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all students. It manifested the nation's commitment to remedy the effects of discrimination suffered by generations of non-English speaking children. Congress has formally recognized that the strength of a nation lies in the richness of linguistic and cultural differences, and that the schools must use these language assets as a means of educational achievement.

Congress stated that it recognized "the special educational need of the large number of children of limited English-speaking ability" in the United States.[21] By authorizing federal monies to local educational agencies, Congress sought to encourage them to meet these special needs through: (1) bilingual education programs; (2) programs designed to impart to students a knowledge of the history and culture associated with their language; and (3) efforts to establish closer cooperation between the school and the home.[22]

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The Bilingual Education Act of 1968 did much to reduce if not destroy the impact of the "melting pot theory" among educators, public schools and writers.

In the past year Congress has once again expressed its commitment to providing bilingual education programs. In the Education Amendments of 1972,[33] Congress directed the Assistant Secretary of the Department of Health, Education, and Welfare to

> carry out a program to meet the needs of minority group children who are from an environment in which a dominant language is other than English and who, because of language barriers and cultural differences, do not have equal educational opportunity.[34]

For the minority group children the Assistant Secretary is authorized to make grants "to develop curricula for the development of reading, writing

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and speaking skills, in the English language and in the language of their parents or grandparents, and to meet the educational needs of such children and their classmates to understand the history and cultural background of the minority groups of which such children are members."[35]

The Education Amendments of 1972 also provided for the establishment of an Ethnic Heritage Studies Program as Title IX of the Elementary and Secondary Education Act of 1965.[36] Under its provisions, the Commissioner of Education may make grants and contracts with public and non-profit agencies for the planning, development and operation of ethnic heritage studies programs,[37] the dissemination of instructional materials, and the training of teachers[38] "to provide assistance designed to afford to students opportunities to learn about the nature of their own cultural heritage, and to study the contributions of the cultural heritage of other ethnic groups in the Nation."[39]

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In addition to the federal legislation providing for the implementation of bilingual-bicultural educational programs,[40] the Department of Health, Education, and Welfare, Office for Civil Rights, has undertaken to insure that certain school districts establish such programs or risk losing federal monies given to them under Title VI assistance programs. In a memorandum published May 25, 1970, the Department stated that compliance reviews under Title VI of the Civil Rights Act of 1964,[41] which requires "that there be no discrimination on the basis of race, color, or national origin in the operation of any federally assisted program" have revealed a "number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils."[42] The memorandum also pointed out that similar practices "which have the effect of discriminating on the basis of national origin exist in other locations with respect to disadvantaged pupils from other

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national origin minority groups, for example Chinese or Portugese."[43]

The memorandum went on to state that affirmative steps must be undertaken where violations of Title VI exist.

> (1) Where inability to speak and understand the language excludes national origin minority children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.[44]

The HEW office for Civil Rights' implicit commitment to bilingual education was made explicit by its Director, J. Stanley Pottinger, at a May 25, 1972, press conference commemorating the second anniversary of the May 25, 1970, directive when he declared that the

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previous "memorandum requires school districts to initiate bilingual-bicultural programs and to insure that remedials programs do not permanently isolate minority children."

STATE LEGISLATION

Prior to the enactment of the Bilingual Education Act in 1967, there was no state legislation authorizing bilingual-bicultural programs. In fact, in some states, teachers risked incurring criminal penalties or having their teaching certificates revoked if they taught in a language other than English.[45/] Since 1968, though, a number of states have passed bilingual legislation.[46/] However, most of these states have passed rather tepid laws, laws which merely make it permissible for bilingual programs to be implemented in the local school districts. Two states, Massachusetts and Alaska, have gone further and have enacted laws which require certain school districts to institute bilingual-bicultural programs.[47/]

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Massachusetts was the first state to pass a comprehensive bilingual education law. The law states that classes conducted exclusively in English are "inadequate for the education of children whose native tongue is another language."[48] Bilingual education programs are necessary to "insure equal educational opportunity to every child."[49] The Massachusetts statute calls for the use of both a child's native language and English as mediums of instruction and for the teaching of history and culture associated with a child's native language.[50] Four million dollars a year was authorized by the act to meet the extra costs of the program.[51]

Alaska's Bilingual Education Act became effective October 1, 1972.[52] The Act declares that the "right to one's native language and culture is inherent in the concepts underlying our constitutional guarantees," and that the "absence of a bilingual program of education has

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worked a great learning handicap for those students who use English as a second language."[53] In Sec. 1 (4) of the Act the legislature sums up the arguments used against the traditional educational policies of our land.

> It is a well-known fact that contrary traditional methods have resulted in below-standard achievements by Alaskan Native students which, in turn, spawn difficulties in secondary and higher educational pursuits, exacerbate acculturation problems, present significant barriers in securing adequate employment and constitute a serious hindrance to the full enjoyment of life and its benefits.[54]

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CASE LAW ON BILINGUAL-BICULTURAL EDUCATION

The right of a national origin minority student to receive a bilingual-bicultural education has been recently taken up by the courts. The basic legal authority relied on by those advocating bilingual-bicultural education is the same case from which the policy requiring the elimination of the dual black-white school system emerged, Brown v. Board of Education.[55] In Brown the Supreme Court stated the basic principle of equal educational opportunity embodied in the Equal Protection Clause of the Fourteenth Amendmendment--where the state has undertaken to provide an educational opportunity, it "is a right which must be made available to all on equal terms."[56] The Court premised this statement on the fact that education is of utmost importance in our society today and a child cannot be expected to succeed if he is denied the opportunity of an education.[57]

The threshold case on equal educational opportunity for national

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origin minority children is a 1971 Texas federal district court decision, Cisneros v. Corpus Christi Ind. School District.[58] Though the Court in Cisneros did not order the implementation of bilingual-bicultural programs, the case has served as the foundation upon which subsequent decisions have relied. Cisneros held that the segregation of Mexican-Americans or any group of children on the basis of their belonging to a readily identifiable ethnic-minority group or class is prohibited by Brown v. Board of Education. The Court stated that

> segregation of any group of children in such public schools on the basis of their being a particular race, color, national origin, or of some readily identifiable, ethnic-minority group or class deprives these children of the guarantees of the Fourteenth Amendment as set out in Brown and subsequent decisions, ... Although these cases speak in terms of race and

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> color, we must remember that these cases were only concerned with blacks and whites. But it is clear to this court that these cases are not limited to race and color alone.[59]

Cisneros is the first court decision to extend the holding of Brown to a group other than one composed of Negro children.[60] Thus this decision provided a new tool for those committed to the struggle to improve the educational status of other disadvantaged minorities.

Since the Brown decision and in the wake of Cisneros, a debate has raged over what constitutes providing an equal educational opportunity for a child that has been victimized by discrimination. The issue, simply stated, is whether the dismantling of dual systems of education and the fostering of integrated education satisfy the requirements of Brown. Supporters of bilingual-bicultural education maintain that mere integration is inadequate without concomitant compensatory programs that help remedy

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the efforts of past discrimination.[61] They argue that national origin minority students have special educational needs which impair their ability to succeed in the English language environment of public schools. If a non-English-speaking child is to be given an equal educational opportunity, bilingual education must be provided so that he may acquire the necessary tools that will enable him to learn.[62]

Legal support for the contention that the special needs of national origin minorities demand more than just integration orders can be found in two important Circuit Court decisions, United States v. Jefferson Board of Education[63] and Hobson v. Hansen.[64] In Jefferson the Fifth Circuit acknowledged the necessity of compensatory education for those Negro school children who had been disadvantaged by the inherently inferior facilities of segregated schools. Judge Minor Wisdom stated that such programs are necessary "to prevent discrimination being perpetuated and to undo the effects of past discrimination."[65]

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In Hobson v. Hansen, Judge Skelley Wright of the District of Columbia Circuit Court of Appeals, extended the principle enunciated in Jefferson. Not only must compensatory education be provided to those racial minorities who have been unfairly disadvantaged because of discrimination, but Judge Wright implied, the education provided must be an education adapted to the special needs of the students.[66] Judge Wright suggested that racial and cultural differences could no longer be ignored and stated that "it is imperative that special programs outside the regular school curriculum be adopted so that the disadvantaged child has a real opportunity to achieve at his maximum level of ability."[67]

This theory of compensatory education, though applied to black minority students in Hobson and Jefferson can, by analogy, be easily applied to national origin minority students. They too, have been subjected to the discrimination inherent in segregated school systems and, as pointed our in Cisneros, are an identifiable minority group subject to the pro-

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tections afforded by the Equal Protection Clause of the Fourteenth Amendment.

To date there have been two district court decisions in which bilingual education programs have been a major issue.[68] In United States v. Texas,[69] the district court, relying primarily on Cisneros held, first, that Mexican American students in the State of Texas "are a cognizable ethnic group and, hence, may avail themselves of the protections afforded under the Fourteenth Amendment" and under Title VI of the 1964 Civil Rights Act and, second, that the Mexican American students have been "subjected, over the years to unequal treatment with respect to the educational opportunities afforded them and are, thus, part of a so-called de jure school system based upon separation of different ethnic origins."[70] In its order the court required the implementation of specific educational programs and curricula designed to meet the special educational needs of the Mexican American students. Included in this order were bilingual and

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bicultural programs.[72] In a memorandum opinion handed down subsequent to the order requiring the implementation of bilingual-bicultural programs the court explained the reasoning behind its earlier decision. The Court stated that it sought to avoid the "cultural and linguistic shock" and the "stigma of inferiority" that Mexican American students encounter when attempting to adjust to their school environment. Both Mexican American students and their Anglo American classmates must learn "to understand and appreciate their different linguistic and cultural attributes."[73] They concluded by stating that the

> process by which all students participate in a joint learning and adjustment process will not only constitute an educational enrichment but, also, will bring the school system as a whole closer to that goal or state-of-being referred to by the Supreme Court as a 'unitary system.'[73]

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The second district court decision, Lau v. Nichols,[74] ruled contra to the Texas case and held a state is not required to provide bilingual education for its non-English-speaking students. In Lau Chinese-speaking children brought a class action suit against the San Francisco Unified School District alleging that the failure to provide a bilingual education denied them the opportunity of an education guaranteed to them by the equal protection clause of the Fourteenth Amendment. The district court, however, while recognizing that the students could not learn in a language they could not understand, and that special instruction would be desirable and commendable, ruled that a bilingual program was not required. The Court said that

> These Chinese-speaking students - receiving the same education made available on the same terms and conditions to the other tens of thousands

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> of students in the San Francisco United School District - are legally receiving all their rights to an education and to equal educational opportunities. Their special needs, however acute, do not accord them their special rights above those granted other students.[75]

Thus the court in Lau reasoned that the state was not legally required to accomodate the special needs of the Chinese-speaking students, for to do so, would be granting them special privileges, not equal educational opportunity.

The Lau decision is presently on appeal to the United States Ninth Circuit Court of Appeals. An interesting development has been the filing of an amicus curiae brief by the United States which supports the plaintiffs' position.[76] The thrust of the brief is that because of the plaintiffs' inability to understand English they are

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being denied the benefits of the state's educational system. [77] As a result of this effective exclusion from the educational process the plaintiffs suffer severe disadvantages, and thus a case of fundamental discrimination arises even though the state's action appears neutral on its face. [78] The brief further asserts that since the discrimination involved rests on distinctions based upon national origins, it is inherently suspect. [79] As a final argument the United States contends that the state's remedial obligations arose from HEW regulations promulgated pursuant to Title VI of the Civil Rights Act of 1964. [80]

Also, or so it seems, the recent property tax cases, Serrano v. Priest [81] and Rodriquez v. San Antonio Independent School District, [82] may have some interesting implications on the right of a national origin minority student to receive a bilingual-bicultural education. In Serrano and Rodriquez the respective courts held that the property tax,

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as a means of financing the state public school system, was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. The Serrano Court determined that "the funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors.[83]

Applying this argument to the right of a child to a bilingual-bicultural education one could contend that a school's educational system which has the demonstrated effect of penalizing the national origin minority child because of his linguistic and cultural heritage is an invidious discrimination and a suspect classification, making the quality of the child's education a function of the race, culture, and/or language of parents and neighbors.

Serrano also rejects the argument, implied in Lau, that since the state was neutral in its educational policies, there exists

no legal requirement for the implementation of a bilingual-bicultural educational program. As the court states in Serrano, "Numerous cases involving racial classification have rejected the contention that purposeful discrimination is a prerequisite to establishing a violation of the equal protection clause."[84] Quoting from Hobson v. Hansen, the court also stated that

> Whatever the law was once, it is a testament to our maturing concept of equality that, with the help of the Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be disastrous and unfair to private rights and the public interest as the perversity of a wilful scheme.[85]

From this discussion of the case law it appears that, though the right of the national origin minority student to a bilingual-

bicultural educational program has not yet been firmly established in the law, it certainly seems that the trend of the law is in that direction. In fact a very persuasive argument can be made that the right of a non-English-speaking child to a bilingual-bicultural program is not only constitutionally permissible but constitutionally required by the Equal Protection Clause of the Fourteenth Amendment.[86]

The Implementation of Bilingual - Bicultural Programs

Though there now exists a commitment to implement bilingual-bicultural education programs in our nation's schools, as manifested by federal and state legislation, and there exists legal authority upholding the right of national origin minorities to such an education, there has been embarrassingly little accomplished thus far. The principal obstacle has been the lack of adequate funding. Congress, in 1969, appropriated a total of $7.5 million for bilingual education.[87] This enabled less than one percent of those eligible

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to benefit from the Bilingual Education Act. In 1971 $85 million was appropriated, a significant improvement, but certainly not remotely approaching the amount needed.[88] Although Title VII will reach a total of 104,000 children participating in 213 programs in 29 states, Guam, Puerto Rico, the U.S. Virgin Islands and the Pacific Islands Trust Territories during the 1972-1973 academic year,[89] only one-half of one percent of the qualified public school children are receiving bilingual-bicultural instruction. To paraphrase Senator Walter Mondale's summation of the congressional funding of bilingual programs: "Congress continues to appropriate 'drops,' when 'showers' or even 'downpours' are needed."[90]

To enrich the lives of 7.7 million students (70% non-English and 30% English-speaking), the "Five-Year Plan: 1972-1977" estimates that if Title VII were converted to a service-oriented approach it would require a Federal expenditure of 4.2 billion dollars.[91] Salaries, staff development,

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materials, community involvement, management and evaluation would call for an estimated $600 per pupil Federal expenditure over the three-year period during which the program is installed in a school.[22]

One author has suggested that the only feasible way to finance these programs would be for all branches of the government to share in the costs of the programs. At this time there seems to be very little, if any, cooperation among the federal, state, and local levels of government.[23]

The Massachusetts bilingual education statute has been advanced as a model for this sharing concept.[24] In Massachusetts each participating school district spends as much money on each bilingual child as it does on any other child in the school system. Then the state itself makes up the difference between the cost of educating a student in the bilingual program and the cost of educating a child in a regular curriculum. For example if the school district spends an average of $600 a year per school child and it costs the district $800 per year to educate a child parti-

cipating in the bilingual program the state would give the district $200 to make up the difference. The Massachusetts plan is an admirable one and should be emulated by other states. Combined with federal assistance, the funding of adequate bilingual-bicultural programs should be a goal within the attainment of any school district.

It should be understood that the bilingual-bicultural programs now being advocated are not just hazy, hypothetical schemes that have been dreamt up by some ivory tower academician. These programs have been instituted in various sections of the country and have been highly successful.[95] Not only have the national origin minority students benefited from the programs but so have the English-speaking students who make up 30% of the programs' participants.[96] Successful bilingual-bicultural programs are a reality, not just someone's utopian promise.[97]

It is time for the country to realize that these programs should be granted a special priority. No longer can we continue to neglect the

special educational needs of the ethnic minorities. We have already condemned too many students to a life sentence of ignorance, poverty, and despair. We must understand, as stated by Congressman Henry Gonzalez, that the "start made possible by a few pioneers and the Bilingual Education Act must now be extended to its farthest limits, lest yet another generation be lost."[98] There must be no outcry that funds are just not available. The needed money is there! Bruce Gardner, an educational expert, testified at a Senate hearing that

> We spend, and I believe that I could document it rather easily, at least a billion dollars a year on foreign language instruction at all levels. Yet virtually no part of it, no cent, ever goes to maintain and further develop the native language competence which already exists in American children. It is as if one said it is all right to learn a foreign language if you start so late that you cannot master it. It is all right for headwaiters, professional performers, and the rich to know foreign

languages. But any child in school who knows one is suspect. It is more than an anomaly. It is an absurdity that, as they say, passeth understanding.[99]

CONCLUSION

If equal educational opportunity is to become a reality for national origin minority students, implementation of bilingual-bicultural curricula must commence immediately. The legislation committing the nation to bilingual education is now on the books. It is up to all of us to insure that we put into practice what now primarily exists in writing. Continuous pressure must be exerted upon our national and state legislatures in order that the requisite amount of funds be provided for the programs. We must involve ourselves in the decisions of our local school boards and push for the establishment of bilingual education programs there, and among our legislators. If these programs are not set up, funded, or properly administered, we must prepare for legal battle by lodging community-initiated administrative complaints with the HEW Office for Civil Rights or by instituting suits against local school districts. There is

a strong argument that it is not only constitutionally permissible, but constitutionally required, that bilingual programs be provided for non-English-speaking students. This, plus the fact that the Department of Health, Education, and Welfare has construed Title VI of the Civil Rights Act of 1964 to mean that bilingual programs can be legally required, indicate that a series of court confrontations would most likely result in a victory for the nation's school children.

Though the short term cost of implementing these programs may be expensive, we must keep in mind the enormous returns our investment in equal educational opportunity will bring us. For the first time in our nation's history we shall be tapping a vast reservoir of human resources that have long remained dormant because of gross neglect. Thus not only will the nation be serving the interests of the national origin minorities, but it will be advancing the interests of every American citizen. Through equal educational opportunity for all, America will be truly fulfilling the promises made by our founding fathers.

FOOTNOTES

1. 347 U.S. 483 (1954).

2. The Massachusetts bilingual education statute provides the following definition of national origin minority students:

"(1) Children who were not born in the United States whose native tongue is a langauge other than English; and

(2) Children who were born in the United States of non-English-speaking parents and who are incapable of performing ordinary classwork in English." Mass. Gen. Law ch. 71A, Sec. 1 (Supp. 1972).

3. T. Anderson and M. Boyer, 1 Bilingual Schooling in the United States (1970) [hereinafter cited as Bilingual Schooling in the United States]; According to the Title VII Division of Bilingual Education "Five-Year Plan: 1972-1977," issued on September 2, 1971, during that period there will be an estimated 5,044,578 national origin minority children in the nation's public schools: 3,045,111 Mexican Americans; 777,583 Puerto

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Ricans; 328,059 multi-ethnic Spanish speakers; 129,432 American Indians; 378,380 French speakers; 216,915 Portuguese speakers; 139,620 Chinese; 11,246 Japanese; 17,714 Chamorro (Guam); and 578 Russians. Since the size of the Mexican American school population is by far the largest, most of the literature and comments have concerned this ethnic minority. However, problems faced by the other groups are very similar.

4. For a discussion of the various cultural and linguistic groups in the United States see 2 Bilingual Schooling in the United States 105-239.

5. Hearing Before the United States Commission on Civil Rights (San Antonio, Tex., Dec. 9-14, 1968); Hearings on S. 428 Before the Special Subcommittee on Bilingual Education of the Senate Committee on Labor and Public Welfare, 90th Cong. 1st Sess. (1967) [hereinafter cited as Bilingual Education Hearings]; United States Commission on Civil Rights, The Unfinished Education; Outcome for Minorities

in the Five Southwestern States, October 1971 (Dec. 1971).

In its summary the Commission stated its basic finding- "minority students in the Southwest- Mexican Americans, blacks, American Indians- do not obtain the benefits of public education at a rate equal to that of their Anglo classmates... without exception, minority students achieve at a lower rate than Anglos; their school holding power is lower; their reading achievement is poorer; their repetition of grades is more frequent."

6. Bernal, "I Am a Mexican-American," A Documentary History of the Mexican Americans 367 (Moquin and Van Doren eds. 1971).

7. United States Commission on Civil Rights, The Mexican Americans 26 (1968).

8. Bernal, "I Am a Mexican American" supra note 6. According to a 1960 survey compiled in the western section of the United States, the median school years completed by Spanish surname individuals of both sexes fourteen years of age and over was, by state: 9.0

years in California, 8.6 years in Colorado; 8.4 years in New Mexico; 7.9 years in Arizona; and 6.1 years in Texas. Brussell, Disadvantaged Mexican-American Children and Early Educational Experience 22 (1968).

9. Hearings on Equal Educational Opportunity Before the Senate Select Committee on Equal Educational Opportunity, pt.8 at 3686 (1970) [hereinafter cited as Equal Educational Opportunity Hearings].

10. Bilingual Education Hearings 509.

11. Equal Education Opportunity Hearings 3685.

12. Id.

13. For a discussion of some of the bilingual problems facing Chinese students in the San Francisco area, see R. Jung "The Chinese Language School in the United States," School and Society, Summer, 1972, at 309.

14. Equal Educational Opportunity Hearings 3709.

15. H.R. Rep. No. 915, 90th Cong, 1st Sess.7 (1967).

16. United States Census of Population: 1960; See also Special Subcommittee on Indian Education of the Senate Committee on Labor and Public Welfare, S. Rep. No. 50, 91st Cong. 1st Sess. (1969); V. John and V. Horner, Early Childhood Bilingual Education xxi (1971).

17. See generally V. John and V. Horner, "Bilingualism and the Spanish-Speaking Child," Language and Poverty: Perspectives on a Theme 140 (F Williams, ed. 1970);

18. Greer, "Public Schools: The Myth of the Melting Pot," Saturday Review, Nov. 15, 1969 at 84.

19. Butts and Cremm, A History of Education in America 361 (1953).

20. Kobrick, "The Compelling Case for Bilingual Education" Saturday Review, Arpil 29, 1972, at 57;

21. See Ballesteros, "Toward An Advantaged Society: A Bilingual Education in the 70's," The National Elementary Principal, Nov. 1970, at 25; One Congressman has stated that he "no longer thought of the country as a melting pot, which tends to homgenize all the various elements, but instead as a mosaic which gains its beauty and strength from variety and diversity." H.R. Rep. No. 915, 90th Cong., 1st Sess. 2 (1967).

22. S. Steiner, La Raza: The Mexican American, 208-215 (1970).

23. This effect upon a non-English speaking child entering school has been described in H.R. Rep. No. 915, 90th Cong., 1 Sess. 3 (1967): "Language skills are almost as vital to the full development of a small child as the basic necessities of life. A small child entering a school which appears to reject the only words he can use is adversely affected in every aspect of his being. He is immediately retarded in his schoolwork."

24. United States Commission on Civil Rights, Mexican American Education Study 11-14 (1971); T. Carter, Mexican Americans in School: A History of Educational Neglect 67 (1970).

25. H.R. Rep. No. 915, 90th Cong., 1 Sess. 2 (1967).

26. Kobrick,"A Model Act Providing For Transitional Bilingual Education Programs in Public Schools," 9 Harv. J. Legis. 265 (1972).

27. Quoted in A. Rodriguez," Education: Bilingual, Bicultural," New Generation, Fall, 1971 at 19.

28. Id.

29. 1 Bilingual Schooling in the United States 8 (1970).

30. 20 U.S.C. § 880b to b-6 (1970); Amendment to Title VII of the Elementary and Secondary Education Act of 1965.

31. 20 U.S.C. § 880b (1970).

32. 20 U.S.C. § 880b-2(c) (1970).

33. Pub. L. No. 92-318 (June 23, 1972).

34. Pub. L. 92-318, Sec. 708 (c) (1) (June 23, 1972).

35. Id.

36. Id. Sec. 504 (a)

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37. Id. Sec. 902

38. Id. Sec. 903

39. Id. Sec. 901

40. In addition to the Bilingual Education Act and the Education Amendments of 1972, federal assistance for bilingual-bicultural programs can also be made available under Titles I, II, and III of the Elementary and Secondary Education Act (1965), Title V of the Higher Education Act. H.R. Rep. No. 915, 90th Cong., 1st Sess 5, 1 (minority views) (1967); Mondale, "Education for the Spanish-Speaking: The Role of the Federal Government," National Elementary Principal, Nov. 1970, at 118.

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41. 42 U.S.C. Sec. 2000d (1964); See also 45 CFR Part 80, H.E.W. Departmental Regulation, promulgated pursuant to Title VI.

42. 35 Fed. Reg. 11595 (1970)

43. Id.

44. Id.; Other major areas of concern relating to compliance with Title VI stated in the memorandum:

> (2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

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(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English;

In a statement before the Civil Rights Oversight Subcommittee, House Committee on the Judiciary, Wednesday, June 14, 1972, J. Stanley Pottinger, Director, Office for Civil Rights, H.E.W., described the

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departmental philosophy upon which the May 25, 1970, memorandum was based-"The drafting of the Memorandum reflected the operational philosophy that school districts should create a culturally relevant educational approach to assure equal access of all children to its full benefits. The burden, according to this philosophy, should be on the school to adapt its educational approach so that the culture, language and learning style of all children in the school (not just those of Anglo, middle class background) are accepted and valued. Children should not be penalized for cultural and linguistic differences - nor should they bear a burden to conform to a school-sanctioned culture by abandoning their own."

45. Ark. Stat. Ann. Sec. 80-1605 (1960); Conn. Gen. Stat. Ann. Sec. 10-17 (1958); Ind. Ann. Stat. Sec. 28-5402 (1970); Iowa Code 280.5 (1971); Nev. Rev. Stat. Sec. 193.150 (Supp. 1969); S.D. Compiled Laws Ann. Sec. 13-33-11 (1967); Tex. Penal Code Ann. art. 288 (1952).

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46. Ariz. Rev. Stat. Ann. Sec. 15-202, 15-1097 to 1099 (Supp. 1971); Cal. Educ. Code Sec. 71, 6457 (West 1969), Sec. 5766 (West Supp. 1971), and Sec. 132735 (Cal. Legis. Serv. 1178 (Aug. 24, 1971)); Colo. Rev. Stat. Ann. Sec. 123-21-3 (Supp. 1969); Ill. Rev. Stat. ch. 122, Sec. 10-22.38a and Sec. 34-18.2 (Ill. Legis. Serv. 2412, 2415 (1971); Me. Rev. Stat Ann. tit. 20, Sec. 102 (16) (Supp. 1971); Mich. Pub. Act No. 84 (1970); Laws of N.M. ch. 309 (1971); N.Y. Educ. Law Sec. 3204 (2), (2a) (McKinney 1970); Ore. Laws ch. 326 Sec. 2-3(1971); Pa. Stat. Ann tit. 24, Sec. 15-1511 (Supp. 1971); Tex. Educ. Code Sec. 11.11 (1971). For a list and description of state laws on bilingual education see Kobrick. "A Model Act Providing For Transitional Bilingual Education Programs In Public Schools," 9 Harv. J. Legis. 260, 268-274 (1972).

47. The Massachusetts statute requires a bilingual program whenever there are "twenty or more children of limited English-speaking ability" within a city, town, or school district. Mass. Gen. Laws ch. 71A,

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Sec. 2 (Supp. 1972); The Alaska statute requires a bilingual program whenever a state-operated school is attended by at least fifteen pupils whose primary language is other than English.

Laws of Alaska ch. 172 Sec. 2(a) (1972).

48. (1971) Mass. Acts and Resolves 943

49. Id. at 944

50. Mass. Gen. Laws ch. 71A Sec. 1 (Supp. 1972).

51. Id. Sec. 8.

52. Laws of Alaska ch. 172 Sec. 1(1) (1972).

53. Id. Sec 1(3) 1972.

54. Id. Sec 1(4) 1972.

55. 347 U.S. 483 (1954).

56. Id. at 493.

57. Id.

fifteen pupils whose primary language is other than English.

Laws of Alaska ch. 172 §2(a) (1972).

48. [1971] Mass. Acts and Resolves 943

49. Id. at 944.

50. Mass. Gen. Laws ch. 71A § 1 (Supp. 1972).

51. Id. §8.

52. Laws of Alaska ch. 172 §1(1) (1972).

53. Id. § 1(3) 1972.

54. Id. § 1(4) 1972.

55. 347 U.S. 483 (1954).

56. Id. at 493.

57. Id.

58. 324 F. Supp. 599 (S.D. Tex. 1970), appeal docketed. No. 71-2397 (5th Cir., filed July 16, 1971).

59. Id. at 604-605.

60. The principle that ethnic isolation of Mexican Americans in the public schools is unlawful has long been established in Texas law. Jesus Salvatiera v. Inhabitants of Del Rio Independent School District, 33 S.W. 2d 790 (Tex. Civ. App. 1930), appeal dismissed, w.o.j., and cert. denied, 284 U.S. 580 (1931); Delgado v. Bastrop Independent School Dist. Civil No. 388 (W.D. Tex., June 15, 1948). However, these cases relied on the substantive due process argument that segregation is arbitrary, while Cisneros relies on the equal protection argument set forth in Brown. A federal court decision in California also held that equal protection of the laws covered Mexican Americans in the public school system in California.

The case, Mendez v. Westminster School District, 64 F. Supp. 544 (S.D. Cal. 1946) aff'd 161 F 2d 774 (9th Cir., 1947) was decided eight years before Brown. See Note, "Brown v. Board of Education Applies to Mexican-American Students and Any Other Readily Identifiable Ethnic Group or Class," 49 Texas L. Rev. 337 (1971).

61. Hearings on S. 428 Before the Special Subcommittee on Bilingual Educ. of the Senate Comm. on Labor and Public Welfare, 90th Cong., 1st Sess. (1967); V. John and V. Horner, Early Childhood Bilingual Education xxii, xxv (1971).

62. A.Gaardner, "Teaching the Bilingual Child: Research, Development and Policy," Educating the Mexican American 257 (H. Johnson and W. Hernandez, eds. 1971); Hawkins, "An Analysis of the Need for Bilingual Education," Educating the Mexican-American 279 (H. Johnson and W. Hernandez, eds. 1971).

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63. 372 F.2d 836 (5th Cir. 1966) aff'd en banc, 380 F. 2d 385 (5th Cir. 1967), cert. denied sub. nom. , Board of Education of the City of Bessemer v. United States, 389 U.S. 840 (1967).

64. 269 F. Supp. 401 (D.D.C. 1967), aff'd sub. nom. Smuck v. Hobson, 408 F. 2d. 175 (D.C. Cir. 1969).

65. United States v. Jefferson Board of Education, supra, note 59 at 876.

66. Hobson v. Hansen, supra, note 60 at 482.

67. Id. at 471.

68. In addition to the two cases discussed there was another case involving bilingual education, though in a slightly different context. In Guadalupe Organization, Inc. v. Tempe School District No. 3, No. 71-435 PHX (D. Ariz., filed Aug. 10, 1971), plaintiffs alleged that I.Q. tests written and administered in English discriminated against Mexican-American and Indian children,

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as evidencedby the disproportionate numbers assigned to mentally handicapped classes, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Plaintiffs sought a retesting of all the children by a bilingual psychologist and the administration of all I.Q. tests in both English and Spanish. Stipulation of Dismissal filed May 9, 1972 granting plaintiffs virtually all the relief they sought.

69. United States v. Texas, Civil No. 5281 (E.D. Tex., Dec. 6, 1971).

70. Id. at 1.

71. United States v. Texas, Civil No. 5281, at 14(E.D.Tex., Aug. 13, 1971).

72. United States v. Texas, Civil No. 5281, at 8 (E.D., Dec. 6, 1971).

73. Id.

74. Civil No. C-70627 LHB (N.D. Cal. May 26, 1970), appeal docketed,

No. 26,155 (9th Cir. Filed July 16, 1970).

75. Id. at 3.

76. Brief for the United States as Amicus Curiae, Lau v. Nichols, No. 26,155 (9th Cir. filed, July 16, 1970).

77. Id. at 5-7.

78. Id. at 10.

79. Id. at 13.

80. Id at 21.

81. Serrano v. Priest, 487 P. 2d 1241 (1971).

82. Rodriquez v. San Antonio, 40 L.W. 2398 (W.D. Tex., 1971).

83. Serrano v. Priest, supra, note 77 at 1244.

84. Id. at 1254, footnote 18.

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85. Id: See also Hawkins v. Town of Shaw, Mississippi, 437 F. 2d 1286, (5th Cir. 1971)

86. See also Note, "Beyond the Law-To Equal Educational Opportunities For Chicanos and Indians," 1 N. Mex. L. Rev. 336, 345 (1971) ("culture conscious programs and policies are not only constitutional, they may be constitutionally required")

87. Roybal, "Education for the Spanish-Speaking: The Role of The Federal Government," National Elementary Principal, Nov. 1970, at 122.

88. Id.

89. Department of Health, Education and Welfare, Division of Bilingual Education, "Projects Currently Being Funded under Title VII," August 1, 1972. Programs were funded in 21 languages: Spanish, French, Portuguese, Chinese, Russian, Palau, Chamorro; and the following Native American languages: Eskimo (Yuk), Navajo, Pomo, Ute, Passamaquoddy, Crow, Northern Cheyenne, Cree, Keresan, Keresow, Cherokee, Choctaw, Seminole and Lakota Sioux.

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90. Mondale, "Education for the Spanish-Speaking: The Role of the Federal Government," National Elementary Principal, Nov. 1970, at 118.

91. supra, note 2, at 1.

92. Id. at 12 E.

93. Kobrick, "The Compelling Case for Bilingual Education "Saturday Review, April 29, 1972 at 58.

94. Mass. Gen. Laws ch. 71A Sec. 8 (Supp. 1972). As mentioned above, Massachusetts has authorized $4 million per year for its bilingual education programs, far more than any other state.

95. See V. John and V. Horner, "Bilingualism and the Spanish-Speaking Child," Language and Poverty 148-149 (F. Williams, ed. 1970); Kobrick, "The Compelling Case for Bilingual Education," Saturday Review, April 29, 1972, at 58. For a summary of the existing bilingual programs in the United States, see 2 Bilingual Schooling

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In the United States 240-291; V. John and V. Horner, Early Childhood Bilingual Education 170-197 (1971); It should be noted that the annual costs incurred for the outstanding bilingual and bicultural programs now being conducted at the Coral Way Elementary School at Miami, Florida, average, exclusive of teacher training and planning, as little as $25 per pupil, H.R. Rep. No. 915, 90th Cong., 1st Sess. 4 (1967).

96. Supra. Note 2 at 21.

97. Though the concept of bilingual-bicultural education is relatively new in the United States, such programs have long been successful in other countries of the world. Many types of bilingual curricula are found throughout the world. See Ballesteros, "Toward an Advantaged Society: Bilingual Education in the 70's, "National Elementary Principal, Nov. 1970, at 28; Sweeney, "Lessons from the

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Schools of other Nations," American Education, Oct. 1971 at 9; V. John and V. Horner, "Bilingualism and the Spanish-Speaking Child," Language and Poverty 147-149 (1970)

98. Gonzalez, "Education for the Spanish-Speaking: The Role of the Federal Government," National Elementary Principal, Nov. 1970 at 121.

99. Hearings on S. 428 before the Special Subcommittee on Bilingual Education of the Senate Committee on Labor and Public Welfare, 90th Cong., 1st Sess. 50 (1967).